IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1547 of 2003

Brihanmumbai Municipal Corporation .. Petitioner

versus

Mr.Rampher D. Pathak .. Respondent

...

Mr.S.K. Talsania i/b M/s.Crawford Bayley & Co. for the petitioner

None for the respondent.

CORAM : D.G. KARNIK,J.

DATED : 3rd August 2005.

P.C.:

1. Heard learned counsel for the petitioner. Perused the affidavit of service filed on record. None present for the respondent though served.

2. By this petitioner, the petitioner

challenges the judgement and order passed by the Industrial Court on 3rd March 2003 dismissing the petitioners' appeal. The facts lie in a narrow compass and are brief summarily below:-

3. The respondent was employed as a Bus conductor in the transport undertaking run by the petitioner Municipal Corporation. Services of the respondent were terminated for a misconduct after holding an enquiry. The respondent challenged the order of termination by filing of an application under the Bombay Industrial Relations Act (for short 'the BIR Act'). During the pendency of a proceedings before the labour court under the BIR Act, the respondent filed an application praying for an interim relief praying that he be taken back in service till the matter was finally disposed of by the Court. By an order dated 9th August 2002, the Labour Court rejected the application and refused the interim relief of injunction by way of an interim reinstatement in service pending final decision of the application. However, the Labour Court directed that the petitioner shall not evict the respondent from the quarter he was occupying till the final disposal of the main application. The aggrieved

respondent filed an appeal before the Industrial Court. By an order dated 3rd March 2003 the Industrial Court dismissed the appeal. That order is impugned in this petition.

4. Learned counsel for the petitioner firstly submits that the Labour Court exceeded its jurisdiction in granting a relief of injunction restraining the petitioner from evicting the respondent from the staff quarter. He further submits that the respondent had not even asked for any relief regarding the quarters in his interim application. The petitioner had no opportunity of meeting a case regarding the eviction of the respondent from his quarters and as such, the Labour Court ought not to have granted any relief which was not even asked for in the interim application. He further submits that in any event, the question of eviction from a staff quarter was not a subject matter of a dispute before the Labour Court under the BIR Act. Allotment of a staff quarter was not a condition of service and was purely a matter of discretion. No employee can claim that he should be allotted a staff quarter as of a right. Even a person who continues to be in the employment can be

evicted from the staff quarter if the staff quarter is otherwise required by the employer-petitioner and therefore assuming that the respondent was reinstated still the petitioner would have a right to evivt him under the conditions of service. The labour court therefore had no jurisdiction to pass an order regarding the staff quarter.

5. I have perused the application for interim relief made by the respondent before the Labour Court, a copy of which is annexed as Exhibit-A2 to the petition. Though there is an averment in the application that the respondent was occupying the staff quarter, no prayer was made by the respondent that he should not be evicted from the staff quarter. The petitioner is therefore right in submitting that it had no opportunity to present the case that the allotment of a staff quarter was discretionary and under the conditions of service any employee in service could also be evicted from the staff quarter and there was no right of allotment of a staff quarter to an employee. In my view, the Labour Court ought not to have granted an relief which was not even prayed for by the respondent.

6. It however cannot be disputed that the petitioner is a public body and would not be entitled to evict the respondent without due course of law. Learned counsel for the petitioner submits that the petitioner has no intention of evicting the respondent without following the due process of law. He however submits that the petitioner must be permitted to adopt the due course of law by initiating necessary proceedings before the appropriate authority in accordance with the law. I see no reason why the petitioner be not permitted to commence the necessary proceedings in accordance with law. In my view, the order passed by the Labour Court restraining the petitioner absolutely from evicting the respondent was improper especially when the proceedings before the Labour Court were not relating to the quarter but only related to the termination.

7. For these reasons, the petition is allowed and the impugned order is set aside. However, the statement of the learned counsel for the petitioner that the petitioner shall not evict the respondent except by following the due course of law is noted and recorded. Accordingly, it is ordered that the

petitioner shall not evict the respondent from the quarter except by following due process of law and for a period of three months after the date of the communication of the order of eviction, if any, passed in accordance with law.

8. Rule is made absolute to the extent mentioned above.

D.G. KARNIK, J